

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, NOVEMBER 14, 2012**

Item	Page
SPECIAL LAND USE PERMIT (SLUP) 250 E. Merrill St. Stoney River Steakhouse (former Max & Erma's) Addition to first floor of existing building for new restaurant serving alcoholic liquors	2
FINAL SITE PLAN REVIEW 250 E. Merrill St. Stoney River Steakhouse (former Max & Erma's) Addition to first floor of existing building for new restaurant serving alcoholic liquors	2
Motion by Mr. DeWeese Seconded by Mr. Koseck to approve the SLUP and Final Site Plan Review for 250 E. Merrill St., Stoney River Steakhouse, with the following conditions: <ol style="list-style-type: none"> 1) A Knox box be added subject to approval of the Fire Dept.; and 2) The applicant is to submit the interior design to the Planning Dept. for administrative approval. 	3
Motion carried, 6-1.	4
OLD BUSINESS 404 Park St. Request to rezone property from R-2 Single-Family Residential to B-2C General Business	4
Motion by Mr. Williams Seconded by Mr. Koseck to continue the hearing for 404 Park St. to January 9, 2013.	8
Motion carried, 6-0.	8

Item	Page
<u>Draft Agenda for the Regular Planning Board Meeting on December 12, 2012</u>	9
<p>Motion by Mr. Williams Seconded by Mr. Clein to suspend the rules of procedure to hear what would be the equivalent of seven items (three of them count as two) so that they all can be heard in one night.</p>	9
<p>Motion carried, 7-0.</p>	10
<p>Motion by Mr. DeWeese Seconded by Mr. Williams to start the meeting at 7 p.m. on either December 12 or 18 depending on whether December 12 is considered a holiday.</p>	10
<p>Motion carried, 7-0.</p>	10

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, NOVEMBER 14, 2012
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held November 14, 2012. Vice Chairperson Gillian Lazar convened the meeting at 7:30 p.m.

Present: Chairman Robin Boyle (arrived at 7:38 p.m.); Board Members Scott Clein, Carroll DeWeese, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams

Absent: Student Representative Kate Leary

Administration: Matthew Baka, Planning Specialist
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

11-186-12

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING
HELD OCTOBER 24, 2012**

Motion by Mr. DeWeese

Seconded by Mr. Clein to approve the Minutes of the Regular Planning Board Meeting of October 24, 2012 as presented.

Motion carried, 6-0.

VOICE VOTE

Yeas: DeWeese, Clein, Koseck, Lazar, Whipple-Boyce, Williams

Nays: None

Absent: Boyle

11-187-12

VICE-CHAIRPERSON'S COMMENTS

It was explained that the chairman would be arriving soon to take over the meeting.

11-188-12

APPROVAL OF THE AGENDA

Ms. Ecker explained it would be necessary to change the order of the agenda because Ms. Lazar will recuse herself from the first item, 404 Park St., per discussion with the City Attorney.

Motion by Mr. DeWeese

Seconded by Mr. Koseck to place 250 E. Merrill St., Stoney River Steakhouse, first on the agenda.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: DeWeese, Clein, Koseck, Lazar, Whipple-Boyce, Williams

Nays: None

Absent: Boyle

11-189-12

SPECIAL LAND USE PERMIT (SLUP)

250 E. Merrill St.

Stoney River Steakhouse (former Max & Erma's)

Addition to first floor of existing building and outdoor dining area for new restaurant serving alcoholic liquors

FINAL SITE PLAN REVIEW

250 E. Merrill St.

Stoney River Steakhouse (former Max & Erma's)

Addition to first floor of existing building and outdoor dining area for new restaurant serving alcoholic liquors

Mr. Baka noted the subject site, currently Max & Erma's, is located at 250 E. Merrill St., on the south side of Merrill St. west of Old Woodward Ave. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Stoney River Steakhouse, is proposing to renovate the existing façade, add approximately 215 sq. ft. to the interior, new signage, and an outdoor café on private property adjacent to the public sidewalk on the south side of E. Merrill St. The proposed new establishment will be operating with the existing Class C liquor license from Max & Erma's. Article 06 section 6.02 Continuance of Nonconformity, A (5) requires that any establishment with alcoholic beverage sales (on-premise consumption) shall obtain a SLUP upon change in ownership or name of establishment, or upon application for a site plan review.

Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP, and then obtain approval from the City Commission for the Final Site Plan and SLUP. As the proposed establishment is a non-contributing resource within the Central Business District Historic District, the applicant was also required to appear before the Historic District

Commission. On October 19, 2012 the proposal was granted approval by the HDC for the proposed changes.

Design Review

The applicant is proposing to renovate the existing façade by expanding the interior area 215 sq. ft. to the east of the main entrance to align with the soffit above, adding new materials across the entire face of the restaurant, installing a new canopy and signage, as well as adding outdoor dining to the west of the main entrance.

A new storefront window system will be installed in the new façade that provides for the 70% transparency requirement between 1 ft. and 8 ft. above grade that is laid out in Article 03 section 3.04E (4).

The applicant is permitted to have a total of 69.5 sq. ft. of signage, based on the frontage of the building. They are proposing to have four signs, for a total of 68.858 sq. ft. of signage. The large name letter sign has been reduced from 30 in. to 24 in. in height, to meet the requirement of the Birmingham Sign Ordinance.

The applicant is now proposing outdoor benches on private property along the west side of the façade within the recessed area of the building, in an area they had previously shown for outdoor dining.

It was pointed out by Ms. Ecker that the Planning Board has been trying to encourage outdoor dining at this location for many years.

Mr. Henry Clover with Clover Architects represented the petitioner. He passed around a materials board. The restaurant is concerned about customers waiting, so for now they intend to provide an outside waiting area rather than outside dining. The windows will be clear glass. Stoney River is part of Blue Ribbon Holdings, a group that owns a number of restaurants including Max & Erma's. There are close to thirty Stoney River restaurants. Their intent is to produce a very high quality product at a slightly lesser price point.

Board members noted that an interior floor plan was not submitted. Mr. Clover said he was not aware that one would be needed. Ms. Ecker realized that staff had not informed him of that requirement. Mr. Clover went on to describe the inside layout. Ms. Whipple-Boyce indicated she was reluctant to send the review forward without the outdoor dining because once this plan is approved it may never come back. Mr. Clover replied they want to make sure the value is there and that it works well before they go down that path. Valet parking will be provided.

There were no comments from members of the public at 8:05 p.m.

Motion by Mr. DeWeese

Seconded by Mr. Koseck to approve the SLUP and Final Site Plan Review for 250 E. Merrill St., Stoney River Steakhouse, with the following conditions:

- 3) **A Knox box be added subject to approval of the Fire Dept.; and**
- 4) **The applicant is to submit the interior design to the Planning Dept. for administrative approval.**

Motion carried, 6-1.

Ms. Whipple-Boyce announced she would not support the motion because it is missing the outdoor dining component that she had really hoped to see in this location. Otherwise, she thinks the design is fantastic.

ROLLCALL VOTE

Yeas: DeWeese, Koseck, Boyle, Clein, Lazar, Williams

Nays: Whipple-Boyce

Absent: None

Chairman Boyle noted that outdoor dining has become a signature aspect of this town. It would be a shame if this restaurant didn't pursue that same path. Mr. Clover thought they fully intend to do that, but they want to get up and running first.

11-190-12

OLD BUSINESS

404 Park St.

Request to rezone property from R-2 Single-Family Residential to B-2C General Business

Ms. Ecker summarized that in accordance with the requirements of the Zoning Ordinance the property owner of parcel #1925451021, being lots 66 and 67 of Oak Grove addition (vacant property on the corner of Park, Oakland, and Woodward Ave.), commonly known as 404 Park, is requesting that the Planning Board hold a public hearing to consider the rezoning of said property from R-2 (Single-Family Residential) to B-2C (General Business). The applicant included a letter from the property owner in the application package indicating that there is a binding purchase agreement in place. The subject parcel has been considered for rezoning twice before, once in 1960 and once in 1988. The application was denied on both occasions.

The subject property has been vacant since 1989 when a previously existing single family home was razed. The applicant's letter indicates the property has been for sale since 2006.

Following receipt of the written report and recommendations from the Planning Board, the City Commission may grant or deny any application for the amendment for rezoning.

The applicant appeared before the Planning Board on September 19, 2012 to discuss the proposed contract rezoning request to allow development of a multi-family

residential building on the existing vacant site. Under the contract zoning that the applicant is proffering, the property would be deed restricted as well as zoning restricted to residential uses only, and no commercial uses would be permitted at the site. The suggestions of the Planning Board included relocating access to the site from Park St. to Oakland Ave.; reducing the proposed building height; and reducing the density of the building.

After much discussion, the Planning Board voted to postpone the matter to give the applicant time to amend the plans to address the comments of the Planning Board and to meet with the neighbors to speak to their comments as well. Comments from the neighbors included requesting an Oakland Ave. access drive, a reduction in density, an increase in the front and north side setbacks, a concern regarding guest parking and concerns over renters living in the neighborhood. Numerous neighbors have signed a petition based on their concerns for the area.

Thus, since September 19, 2012, the applicant has met with the neighbors on two occasions, and has amended their site plan and building design to address the concerns of the neighbors and the comments of the Planning Board.

Mr. DeWeese said it bothers him to have a business classification even with a residential restriction because this is a sensitive neighborhood. Ms. Ecker replied that classification was selected by the applicant based on the setbacks.

Mr. Koseck inquired what the applicant would be held to with the rezoning. Ms. Ecker said basically they are committing to a footprint, the number of units, and the agreement outlining those particulars for the contract rezoning. If the City Commission decides the rezoning can go through, then the proposal would come back to the Planning Board with plans and layouts and the board would do a full Preliminary and Final Site Plan Review on it.

Mr. Chuck DiMaggio with Burton Katzman recalled at the conclusion of the last meeting they indicated that through this rezoning process they wanted to strike a balance between what they think is appropriate for the site and what respects the neighborhood. At that meeting a number of concerns were voiced about the project.

Through meetings with the neighbors on two occasions they have attempted to address the concerns. They have now come up with a row house type of project with six units, three on the ground floor and three on the upper floor. The bulk has been reduced 40 percent from what was originally proposed. Height is residential in scale – 26 - 28 ft. Access is off of Park St., two parking spaces/unit, two guest parking spaces, a 15 ft. setback off of Park St., a 20 ft. setback from Woodward Ave., and a 7 ft. setback off of Oakland Ave. They believe the price points this rental will demand will bring in residents of the caliber this City would desire to have.

Ms. Ecker noted the applicant is exceeding the nine space parking requirement by five spaces. Mr. Williams observed the previous proposal required traffic from 30 cars out onto Park, and now there will only be 14.

Mr. DiMaggio presented several slides showing residences in the Ravines neighborhood built in the shadow of office buildings, or against Woodward Ave.

The chairman invited comments from the audience at 8:48 p.m.

Ms. Michelle Irwin, 356 Ferndale, said she doesn't know how the board could consider rezoning when they don't understand what the building will look like. She had concerns about the potential increase in density to their neighborhood. If this proposal goes through, it would set a precedent for other homeowners that back up to Woodward Ave. to level their homes and then apply for rezoning. That would really change the flavor of the area. She presented more petitions from neighbors opposing commercial rezoning.

Mr. Benjamin Gill, 520 Park St., observed there is a whole row of houses along Woodward Ave. Six units is way too much density. It is hard to get through on Park St. when people are parked on both sides of the street. A fire engine could not get through to go behind the building. The applicant can work within the zoning as it is now to develop the property. Lastly, Mr. Gill expressed his opinion that staff is biased towards the developer.

Mr. Jason Yert, 490 Park St., said the developer wants to rezone to commercial because it will make him more money. It is not better for the community or for the residents. Unless the developer can prove why the property should be rezoned, Mr. Yert doesn't think the board should consider it.

Mr. John Gleason, 356 Ferndale, described beautiful homes that have been developed in his neighborhood despite the surroundings. He feels rental apartments have the potential to tank the property values for the rest of the area. They are simply not appropriate.

Mr. Matt Wimble, 452 Park St., said the applicant bought the property as a single-family zoned lot, raised the price, and that created the problem being used as a justification for this project. Mr. Wimble did not think people should be allowed to create a problem and then benefit from it. He cautioned the board not to rezone until they actually have a plan.

Mr. Brad Host, owner of 416 Park St., the rental house next door to the property in question, believes the square footage of this property only allows three units if it is rezoned. Commercial entrances to the Ravines neighborhood were there before new houses were built.

Ms. Dorothy Conrad, 2252 Yorkshire, commented this is a special neighborhood and it needs to be protected. Taking the proposed action isn't helping to protect it. The

proposal is spot zoning that would create a special zoning classification for someone to come in and overbuild on a piece of property. She objects to it and is sure a beautiful house can be built there.

Mr. Reed Bennett, 271 Euclid, said the neighbors have a high standard for what they expect to go in on the subject property. He doesn't see the burden of proof for rezoning. A high quality single-family residence can be constructed there. He went on to say the opinion of staff is going to look like it is the opinion of the City. The chairman told him that the Planning Board makes the decisions. Ms. Ecker added the previous decisions that were made with regards to two rezoning requests were in the initial report that was given to the board and discussed at the presentation.

Ms. Bev McCotter, who owns the house at 287 Oakland, said she opposes any multi-family zoning. She thinks it would forever change the character of the Little San Francisco area of Birmingham. It would add extra traffic and put people in there who are not financially tied to the neighborhood. She knows of a party who is interested in the property to build a single-family home, but their offer was not accepted.

Mr. Frank Flynn spoke to represent Mr. Richard Lambert, the property owner. The parcel is on the market for \$379 thousand and he does not think the price is too high. A vacant property less than one-half the size recently closed for \$299 thousand. The offer that was mentioned earlier was low ball and not considered. He concluded by saying high-end rental properties are extremely rare.

Mr. Jim Wilheight, 376 Ferndale, noted the property is very valuable. If the price is right, it will sell.

Ms. Whipple-Boyce received clarification that if a developer were to build a two, three, or four unit development there, rezoning would be necessary.

Mr. Williams wanted to see a history of how Brown St. was rezoned.

Mr. DeWeese did not see a compelling case for rezoning without looking at the whole area. There is considerable opposition from the neighbors.

Mr. Clein pointed out that contract zoning is a legal land use tool in this state. This contract rezoning has been requested for a classification where no variances are required because they may not be granted on the basis of self-created hardship.

Discussion centered on the contract for rezoning. Consensus was that it would be tough to support the proposal tonight without seeing the terms of the agreement.

Chairman Boyle did not think enough progress has been made for the board to make a decision. Enormous progress has been made; however the board still does not have enough information to make a decision.

Motion by Mr. Williams

Seconded by Mr. Koseck to continue the hearing for 404 Park St. to January 9, 2013.

No comments from the public were voiced at 9:46 p.m.

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Koseck, Boyle, Clein, DeWeese, Whipple-Boyce

Recused: Lazar

Nays: None

Absent: None

Board members listed the information they would need for the January 9 meeting:

From the applicant –

- A draft of the terms of the contract volunteered by the applicant as reviewed by Mr. Currier;
- A rendering of the proposal with elevations showing how it would fit on the site with the adjacency to the neighbors to the south, to the north, and to the west;
- A meeting with residents so they know what is being proposed.

From staff –

- A letter of opinion from the city attorney outlining the nature of contract zoning and what precedent it creates for similarly situated properties within the neighborhood;
- A review of residential zoning in other zone districts and what they would generally allow;
- A history of rezoning to R-7 and R-8 on Brown St.

Ms. Ecker noted the complete agenda information is posted on the City's website the Friday before the meeting. Additionally, it was affirmed the protest petition from the property owners remains active as long as the public hearing continues.

The board took a short recess at 10:03 p.m.

11-191-12

FINAL SITE PLAN REVIEW

550 W. Merrill St.

Office Building (former Birmingham Public Schools Administration Building)

Renovation and expansion of existing building with associated parking

(postponed to December 12, 2012)

11-192-12

STUDY SESSION ITEM

Multi-Modal Plan Update

Ms. Ecker advised that on August 28, 2012 the City Commission approved a contract with The Greenway Collaborative to oversee the development of a City-wide Multi-Modal Transportation Master Plan to improve walking, biking, and transit conditions in the City. As decided at the May 7, 2012 City Commission meeting, this process is being overseen by a diverse Advisory Committee representing different system users. The Greenway Collaborative has since initiated the project with guidance from staff and the Committee.

Ms. Ecker advised that part of the contract with Greenway was to do a public engagement survey, and it was completed by 429 people, 56.9 percent of whom were Birmingham residents. In most cases there was not much of a difference in the responses between residents and non-residents. Now the responses will be used to draw up a vision statement with goals and objectives for the plan. The Advisory Committee will review those and present them to the public on January 17, 2013 at the Baldwin Library.

Greenway is currently conducting an inventory and analysis of the existing conditions of the bicycle, pedestrian, automobile and transit environment.

The next public meeting will be at the end of February when a draft plan will be presented based on facts and community input.

11-193-12

MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA (no one was left in the audience)

11-194-12

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approvals
 - A building on W. Maple Rd. has submitted a plan for outdoor seating for employees on private property between the back of the building and the Parking Deck. Board members were in favor.
- c. Draft Agenda for the Regular Planning Board Meeting on December 12, 2012
 - Three Bistro Applications: Birmingham Sushi, What Crepe?, Crush;
 - Final Site Plan Review for 550 W. Merrill St.

Motion by Mr. Williams

Seconded by Mr. Clein to suspend the rules of procedure to hear what would be the equivalent of seven items (three of them count as two) so that they all can be heard in one night.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Clein, Boyle, DeWeese, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: None

Motion by Mr. DeWeese

Seconded by Mr. Williams to start the meeting at 7 p.m. on either December 12 or 18 depending on whether December 12 is considered a holiday.

Motion carried, 7-0.

VOICE VOTE

Yeas: DeWeese, Williams, Boyle, Clein, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: None

d. Other Business

- A green “V” has been selected by the City Commission as the wayfinding sign for the vias.

10-195-12

PLANNING DIVISION ACTION ITEMS

a. Staff report on previous requests (none)

b. Additional items from tonight’s meeting (none)

10-196-12

ADJOURNMENT

No further matters being evident, the Planning Board motioned to adjourn at 10:25 p.m.

Jana Ecker
Planning Director